Supreme Court, U.S.
FILED
04 184 AUG 2 - 2004
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT OF THE UNITED STATES

C.M.C.,

PETITIONER,

versus

G.A.L. and K.L.,

RESPONDENTS.

ON PETITION FOR WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

APPENDIX, volume 3

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28 U.S.C. sec. 1738A
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parents are dead. See Mo. Stat. Ann. § 475.045.[25]

Far from taking a position akin to Colorado's choice in C.C.R.S., see maj. op. at 16, Missouri does not apply its divorce law to adoption cases. Even where that state permits third-parties to obtain custody under its dissolution of marriage law, see Mo. Stat. Ann. § 452.375(5)(5) (permitting Missouri courts to award custody to third-parties only in divorce actions), it rejects the application of a best interest analysis to third-party custody petitions and requires a finding on the record that the parent is unfit, Cotton v. Wise, 977 S.W.2d 263, 264 (Mo. 1998); see also Jones v. Jones, 10 S.W. 3d 528, 537 (Mo. App. Ct. 1999)(rejecting earlier Missouri Court of Appeals cases, including In re K.K.M., 647 S.W.2d

[25] Nor does the record, such as it is, support the majority's suggestion that the Missouri court was required but failed to appoint a guardian ad litem in this case. See maj. op. at 17-18. Motions filed with the court by both parties clearly attest in their Certificates of Mailing that copies were mailed to an individual designated as Guardian Ad Litem.

886 (Mo. Ct. App. 1983), see maj. op. at 17, that applied a best interest analysis beyond parent versus parent custodial disputes).

Finally the majority comes to the Interstate Compact on the Placement of Children. The compact provides protocols for the interstate placement of children for adoption or foster care. Because the "sending agency" retains the same jurisdiction over custody matters that it would have had if the child had remained in the sending agency's state, § 24-60-1802, art. V(a), 7B C.R.S. (2003); and because the compact's broad definition of "sending agency," see § 24-60-1802, art. II(b), includes not only a party state but also its officers, employees, subdivisions, courts, and any person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought any child to another party state; the majority attributes to Missouri law the

astonishing proposition that a person assisting with the placement as an intermediary is the "sending agency," within the meaning of the compact, and personally has "jurisdiction" over the child, enabling that person, as distinguished from the courts of her state, to decide whether the child should be returned. Because an affidavit from the Missouri attorney of the prospective adoptive parents was attached to the petition filed in this court, indicating that she acted as the intermediary in this case and that she "sought no such outcome," maj. op. at 41, the majority therefore considers itself free to disregard the order of the Missouri circuit court commanding return of the child to that state.

It is a mystery why the majority would feel obliged to defer to a sister state's construction of an interstate compact, which we have ourselves adopted and construed, see, e.g., Dept. of Soc. Services v.

Dist. Court, 742 P.2d 339 (Colo. 1987), when it is unwilling even to defer to that state's construction of its own law regarding custody in the wake of a failed adoption. In any event, in fairness to Missouri's high court, I must disagree with the majority's reading of Missouri's construction of the compact. In In re Baby Girl, 850 S.W.2d at 68-69, the Missouri court clearly finds that even an individual mother who attempts an illegal transfer of custody is a "sending agency" within the meaning of the compact, thereby making the compact applicable; but it just as clearly concludes from the terms of the compact that the appropriate court of the sending state -- specifically, "the Circuit Court of Dunklin County" -- therefore retains jurisdiction over the child. The unremarkable proposition that a sending agency could have no more authority over the child, had it "remained in the sending agency's state," than is

permitted by the courts of that state, is implicitly accepted, without question, by this and other states applying the compact. See, e.g., Dept. of Soc. Services, 742 P.2d at 341 ("Based upon our interpretation of the Interstate Compact, the Ohio court's continuing jurisdiction, and HCDHS's withdrawal of its consent to the placement of (the children) . . . ."); [26] Broyles v. Ashworth, 782 S.W.2d 31, 33-34 (Tex. App. 96th Dist. Ct. 1989) ("We interpret the statute as meaning that whatever authority the sending agency might have with respect to custody and disposition of the child . . . is to be determined according to the law of the sending agency's state.").

More fundamentally, however, the ICPC

[26] Although a special concurrence in that case by Justice Mullarkey would have made the majority's distinction between adoption and custody, and would have similarly relied on E.E.B. for the proposition that Colorado could determine the custody of the children rather than returning them to Ohio, in 1987 that position did not win the day. See maj. op. at 28.

addresses the treatment and disposition of the child "during the period of the placement." See § 14-13-103(Official Comment). It does not purport to deprive the sending state of jurisdiction over the adoption or provide for separate orders of custody following denial of an adoption. Although the UCCJEA does not govern adoptions themselves, its comments indicate that it may be necessary to apply the Act to adoption proceedings in a number of instances, including those in which a separate custody determination is required after an adoption is denied. See Id. To the extent that the majority's jurisdictional analysis is premised upon a distinction between Missouri's adoption order and a subsequent determination of the custody of the child, jurisdiction over that custody determination is governed by the UCCJEA.

The Missouri court did not decline to rule on

the custody of the child. The Missouri statutes permit the appointment of a guardian for a child following a failed adoption for long-term care of the child, but they also specify the limited circumstances in which the court may appoint someone other than the parent as guardian. The Missouri circuit court found that neither consent nor any lack of fitness of the mother permitted the adoption to proceed. In the absence of any condition recognized by the Missouri statutes permitting the appointment of a guardian other than the parent, it ordered custody returned to her. Even the majority agrees that Missouri, rather than Colorado, was the proper jurisdiction to make such a custody determination, unless it declined to exercise that jurisdiction. The majority simply refuses to recognize the Missouri court's custody order because it was not based upon the same substantive criteria that would have been

applied by the courts of this jurisdiction.

The majority rationale in this case is truly a textbook example of the evil that the UCCJA was rewritten to abolish. Its uncritical reliance on the mantra of "best-interests" to create an additional basis for jurisdiction fosters the very jurisdictional uncertainty and conflict among child-custody orders that the National Conference sought to eliminate - in the service of the child's best interests. Ironically, because most states have separate statutes already governing adoptions, custody disputes arising from interstate adoptions were not even among the problems that the UCCJEA felt a need to specifically address. Hopefully, this inauspicious beginning for the UCCJEA in Colorado does not portend another thirty-years war between states seeking to substitute their own notions of a child's best interests for those of their sister states.

I respectfully dissent.

X District Court
Jefferson County, Colorado
Court Address: 100 Jefferson County Parkway
Golden, CO 80401
Telephone: 303-569-3272

THE PEOPLE OF THE STATE OF COLORADO

In the Interest of:

ALEXANDER JOHN CAMP, A Minor Child
(DOB 04/18/03)

Upon the Petition of:

COLLEEN MARIE CAMP, Petitioner

And Concerning:

GREGORY ALAN LAND
VALERIE KAYE LAND, Respondents.

Case Number: 03 DR 2893
Division Courtroom

Attorney:
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FAX: (303) 670-4405 Atty. Reg. # 33906

ORDER DISMISSING RESPONDENT'S VERIFIED PETITION FOR ALLOCATION OF PARENTAL RESPONSIBILITIES

THIS MATTER comes before this Court on a *Verified Petition for Allocation of Parental Responsibilities*. The Court, having reviewed the Petition, and any responses thereto, being fully advised, orders as follows:

1. The initial custody termination regarding the child who is the subject of this action was made in the Circuit Court of St. Charles County Missouri;
2. Petitioner Natural Birth Mother withdrew her Consent to Termination of Parental Rights and Consent to Adoption pursuant to Missouri law;
3. On October 15th, 2003, Joseph R. Briscoe, Administrative Judge of the Family Court, Circuit Court of St. Charles County Missouri, granted Petitioner Natural Birth Mother's

Motion to Dismiss Petition for Adoption and ordered that "physical custody of the minor child shall be restored to the natural mother, Colleen Camp, forthwith."

4. County of Jefferson, State of Colorado does not have jurisdiction in this case to grant Respondent's Petition for Allocation of Parental Responsibilities as the State of Missouri has retained exclusive and continuing jurisdiction.

IT IS SO ORDERED that the Respondent's Petition is hereby dismissed.

Executed this 3rd day of January, 2004, N.P.T. 12/4/03.

___/s_Stephen M. Munsinger_____
Judge/Magistrate

DISTRICT COURT, JEFFERSON COUNTY, COLORADO
Court Address: 100 Jefferson County Parkway
Golden, CO 80401

Case Number: 03 DR 2893
DIVISION 11
COURTROOM: 4-D

THE PEOPLE OF THE STATE OF COLORADO

In the Interest of:

ALEXANDER JOHN CAMP,
Minor Child,

Upon the Petition of:

COLLEEN MARIE CAMP, Petitioner

And Concerning:

GREGORY ALAN LAND
VALERIE KAYE LAND, Respondents.

ORDER

THIS MATTER comes before this Court upon Petitioner's Response to Motion to Dismiss and Petition for Writ of Habeas Corpus or in the Alternative, for Post-Trial Relief. The Court, having reviewed the pleading, court file, and applicable

rules and law issues the following Order.

The Court finds this Court ruled on December 4, 2003 during a telephone conference that Judge Briscoe had original jurisdiction of this case, therefore, this Court did not have jurisdiction and the case was ordered closed. Despite the allegations in the Response, the Court never issued a written order.

In as much as counsel asks this Court to reconsider any previous orders, any request for such relief is **DENIED**. Counsel may have 30 days from the date of this Order t request post-trial relief. Counsel may receive a copy of the minute order from the clerk's office if counsel so desires, but no written order will be forwarded.

Done in Golden, Colorado this 13th day of January 2004

BY THE COURT:

___/s_____
Stephen M. Munsinger

District Court Judge

Counsel is ordered to mail copies

of this document to all other

Parties of Record or their Counsel

within 48 hours of receipt and furnish

to the Court a Certificate of mailing

within one week

IN THE CIRCUIT COURT OF
ST. CHARLES COUNTY, MISSOURI

FAMILY COURT DIVISION

IN THE INTEREST OF:	)	
	)	
ALEXANDER JOHN CAMP	)	
	)	Cause No. JU103-180A
	)	
GREGORY ALAN LAND and	)	
	)	
VALERIE KAYE LAND,	)	
Petitioners.	)	

JUDGMENT OF DISMISSAL OF PETITION OF ADOPTION

On the 21st day of April, 2003, Petitioners filed a two-count petition seeking termination of the parental rights of the natural parents of Alexander John Camp ("minor child"), transfer of legal custody of the minor child to Petitioners and adoption of the minor child. On that same day, Petitioners filed a Motion for an Emergency Order for Transfer of Custody of the minor child to Petitioners.

Also on that same day, Petitioners filed a document signed by the minor child's natural mother entitled "Transfer of Temporary Custody and Appointment of Power of Attorney [sic] for Care of Child," under the authority of section 475.024 RSMo, which authorizes a parent of a minor to "delegate to another individual, for a period not exceeding one year, any of his powers regarding care of custody of the minor child, except his power to consent to marriage or adoption of the minor child." The presiding judge of this court, in the absence of the administrative judge of the family court, granted Petitioners' motion and entered a judgment approving the "preliminary placement" of the minor child with Petitioners and retaining jurisdiction for the purpose of further proceedings.

With the above documents, the court received a Consent to Termination of Parental Rights and

Consent to Adoption executed by the minor child's natural mother on April 21, 2003, whose signature was properly notarized and also witnessed by the signatures of two adult witnesses. The consent was given on a Form MO 886-3539(7-98) developed and promulgated by the Missouri Department of Social Services under the mandate of subsection 453.030.9, RSMo.

As authorized by subsection 453.030.6, RSMo, the court, in lieu of approving the natural mother's consent, entered an order on May 15, 2003, that the consent was not approved because "Said Consent did not identify the name of any possible father of the child. The court requires testimony before the court by the birth mother so that the court can determine if it is possible to identify any and all possible fathers." On July 25, 2003, before the court heard any testimony, the natural mother filed a Motion to

Withdraw and Revoke Consent to Termination of Parental Rights and Consent to Adoption. After a hearing, the court granted the natural mother's Motion and scheduled a later hearing on the issue of the temporary custody of the minor child.

August 22, 2003, Petitioners filed a First Amended Petition for Termination of Parental Rights and Adoption. On September 9, 2003, the natural mother filed a Motion to Dismiss the petition for adoption. On September 12, 2003, Petitioners and the natural mother appeared by counsel. The court took the natural mother's Motion under advisement and ordered that the minor child remain in Petitioners' temporary custody until further order of the court.

On September 26, 2003, Petitioners filed their Second Amended Petition for Termination of Parental Rights and Adoption. Both the First

Amended Petition and the Second Amended Petition were filed without seeking leave of court to file an amended petition.

The original Petition alleges that the natural mother consented in writing to the termination of parental rights and that the minor child's natural father is unknown. The First Amended Petition alleges that the natural mother has identified Demetrias Curtez as the father of the minor child and alleges the natural mother's abandonment of the minor child. The Second Amended Petition deletes the allegation that the natural mother consented in writing to the termination of her parental rights and adds an allegation that "The Natural Mother has a mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to

knowingly provide the child with the necessary care, custody and control."

In any adoption of a child under the age of 18 years, the court must receive the written consent of the child's natural mother and natural father (453.030.3, RSMo). This written consent "may be withdrawn anytime until it has been reviewed and accepted by a judge" (453.030.7, RSMo).

Section 453.040, RSMo, however, provides that consent of these parties is not required of:

"(1) A parent whose rights with reference to the child have been terminated pursuant to law. . ." In this case, the minor child's parents' rights have not been so terminated.

"(2) A parent of a child who has legally consented to a future adoption of the child." The court has received no such consent from either parent.

"(3) A parent whose identity is unknown and

cannot be ascertained at the time of filing of the petition. At the time of the filing of the original Petition, there was no evidence of the minor child's father's identity. Subsequently, in their amended petitions, Petitioners alleged that the natural mother had identified the minor child's father.

(4) (This subsection is not applicable here.)

"(5) A parent or other person who has not executed a consent and who, after proper service of process, fails to file an answer or make an appearance" in subsequent proceedings. There has been no service of process on any person whose consent is otherwise required.

"(6) A parent who has a mental condition which is shown by competent evidence either to be permanent or such that there is no reasonable likelihood that the condition can be reversed and which renders the parent unable to knowingly provide the child the

necessary care, custody and control." Petitioners made no such allegation about the natural mother for more than five months after filing their original petition in this cause and only after the natural mother had withdrawn her consent. Petitioners made only a bare allegation that the natural mother has such a mental condition and their allegation is not supported by affidavit or medical records.

"(7) A parent who has for a period of at least . . .sixty days for a child under the age of one year of age, immediately prior to the filing of the petition for adoption, willfully abandoned the child . . ." On April 19, 2003, on the day following the minor child's birth, the natural mother –for reasons not apparent on the record– placed temporary custody of the minor child with Petitioners, as permitted by section 475.024 RSMo. She agreed to pay Petitioners a stated daily rate for their care of the child in the event that she

later wished to resume physical custody of the child.

The court concludes that:

1. The natural mother did not abandon the child for purposes of later adoption because:

A. She arranged for her child's care by persons appearing from the record to be suitable caretakers for the child and arranged to compensate there persons for that care.

B. If there was abandonment, there was no abandonment for sixty days immediately prior to the filing of the original petition for adoption. Although the natural mother was not personally caring for the child for sixty days prior to the filing of the First Amended and Second Amended petitions, there was no

court order permitting her to have the child in her physical custody.

2. The natural father did not abandon the minor child. Abandonment requires, at a minimum, that the parent with an obligation to provide a child's care and support have knowledge of the child's existence. There is no evidence in the record that the natural father of this minor child has any knowledge of the child's birth or of the child's present circumstances.

3. The natural mother has withdrawn her consent to termination of her parental rights and consent to adoption before such consent was reviewed and approved by a judge.

THE COURT, THEREFORE, ORDERS, ADJUDGES AND DECREES as follows:

The natural mother's Motion to Dismiss is

GRANTED.

The physical custody of the minor child shall be restored to the natural mother, Colleen Camp, forthwith.

SO ORDERED:

s/_____ October 15, 2003
Joseph R. Briscoe #21628 Date
Administrative Judge of the
Family Court

IN THE CIRCUIT COURT OF
ST. CHARLES COUNTY, MISSOURI

FAMILY COURT DIVISION

IN THE INTEREST OF:	)	
	)	
ALEXANDER JOHN CAMP	)	
d.o.b. April 18, 2003	)	
	)	Cause No. JU103.180 A
	)	
GREGORY ALAN LAND and	)	
VALERIE KAYE LAND,	)	
Petitioners.	)	

JUDGMENT DENYING PETITIONER'S MOTION TO VACATE JUDGMENT

The court entered a Judgment of Dismissal of Petition of Adoption on October 15, 2003. Petitioners have timely filed a Motion to Vacate Judgment. That motion was heard on December 5, 2003, and the court ook the cause under submission.

The court's file clearly reflects that the child's mother ("Mother") willfully and intentionally transferred custody of the minor child to Petitioners

on April 19, 2003, with the understanding that Mother may change her mind in the future and that, if she did change her mind, she would pay Petitioners $20.00 a day for each day that Petitioners cared for the child.

The court's file also shows that Mother executed a written Consent to Termination of Parental Rights and Consent of Adoption on April 12, 2003. The court did not approve the said consent and scheduled the issue of Mother's consent for a hearing. Before the hearing was held Mother, on July 25, 2003, filed a motion with the court to withdraw her consent, as permitted by subsection 453.030.7, RSMo.

Petitioners filed a Second Amended Petition alleging that the natural mother has abandoned the minor child and that the court shoujld terminate Mother's parental rights as a result.

Petitioners call the court's attention to the

decision in *L., C.B. and J.L. v. L, K.E.*, 937 S.W.2d 734 (Mo. App., E.D., 1990). The court there held that "failure to support alone" does not warrant termination of parental rights and that neglect "is ultimately a question of an intent to forego parental duties." Id., at 737.

> In a case for termination of parental rights based only on the ground of abandonment under sections 453.040(1) and 211.447.2(1)(b), two conditions must be shown. It must be proven that the parent, without good cuase, left the child: (1) without any provision for parental support; and, (2) without making any arrangements to visit or communicate with the child, although able to do so. Section 211.447.2(1)(b). Abandonment focuses on the parent's intent taking into consideration all evidence of the parent's conduct, including conduct before and after the statutory period. [Citation.]

In the Interest of G.M.T., a minor, 965 S.W.2d 200, 202 (Mo.App., E.D. 1998).

Mother did not leave the child without any provision for support. Both conditions cited in *G.M.T.* must be met, so Petitioners have not met the

two-pronged test required to show abandonment. Mother's agreement to pay for the cost of the child's care in the event that she changed her mind about consenting to termination of her parental rights shows that she did not intend to forego her parental duties.

The court's decision *In the Matter of D. and D., OV and MV*, 408 S.W.2d 361 (Mo.App., Spfld., 1966) was rendered before the adoption of subsection 453.030.7, RSMo, in 1997 and is, therefore, inapplicable.

In *State ex rel. L.L.B. v. Eiffert*, 775 S.W.2d 216, 219 (Mo. App., S.D., 1989) the court held, "An adoption proceeding is not a forum for a determination of custody between parents." The court here is not determining whether Mother or the minor child's alleged father should have custody as between them. Rather, the court is determining as a

matter of law that Mother has effectively withdrawn her consent to the termination of her parental rights and the adoption of the minor child by Petitioners and that Mother has not abandoned the minor child. The consequence of that determination is that the child shall be returned to Mother's custody. Any determination of whether Mother or the alleged father should have custody must necessarily await another proceeding.

The court, therefore, ORDERS, ADJUDGES AND DECREES that Petitioner's Motion to Vacate Judgment of Dismissal of Petition for Adoption is DENIED.

SO ORDERED:

s/_____ January 2, 2004
Joseph R. Briscoe #21628 Date
Judge

SUPREME COURT, STATE OF COLORADO
Two East 14th Avenue Case No. 04 SA 18
Denver, Colorado 80203

ORIGINAL PROCEEDING
DISTRICT COURT JEFFERSON COUNTY,
03DR2893

In re:

THE PEOPLE OF THE STATE OF COLORADO,

In the interest of:

Minor Child :

A. J. C.:

DOB: 04/18/03

Petitioners:

G. A. L. and V. K. L.,

and concerning :

Respondents:

C.M.C. and D. C.

ORDER OF COURT

Upon consideration of the Petition for Rehearing

filed in the above cause, and now being sufficiently advised in the premises,

IT IS THIS DAY ORDERED THAT said Petition shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, MAY 03, 2004.

JUSTICE COATS would grant the Petition.

Supreme Court
COURT SEAL
State of Colorado

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Honorable Stephen M. Munsinger
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Clerk of the Jefferson County
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United State Constitution, Art. IV sec. 1

Full Faith and Credit shall be given in each State to the Public Acts, Records, and Judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

28 U.S.C. sec. 1738A
(Parental Kidnaping Prevention Act)

§ 1738A. Full faith and credit given to child custody determinations

(a) The appropriate authorities of every State shall enforce according to its terms, and shall not modify except as provided in subsections (f), (g), and (h) of this section, any custody determination or visitation determination made consistently with the provisions of this section by a court of another State.

(b) As used in this section, the term--

(1) "child" means a person under the age of eighteen;

(2) "contestant" means a person, including a parent or grandparent, who claims a right to custody or visitation of a child;

(3) "custody determination" means a judgment, decree, or other order of a

court providing for the custody of a child, and includes permanent and temporary orders, and initial orders and modifications;

(4) "home State" means the State in which, immediately preceding the time involved, the child lived with his parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old, the State in which the child lived from birth with any of such persons. Periods of temporary absence of any of such persons are counted as part of the six-month or other period;

(5) "modification" and "modify" refer to a custody or visitation determination

which modifies, replaces, supersedes, or otherwise is made subsequent to, a prior custody or visitation determination concerning the same child, whether made by the same court or not;

(6) "person acting as a parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody;

(7) "physical custody" means actual possession and control of a child;

(8) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States; and

(9) "visitation determination" means a judgment, decree, or other order of a court providing for the visitation of a child and includes permanent and temporary orders and initial orders and modifications.

(c) A child custody or visitation determination made by a court of a State is consistent with the provisions of this section only if--

(1) such court has jurisdiction under the law of such State; and

(2) one of the following conditions is met: (A) such State (i) is the home State of the child on the date of the commencement of the proceeding, or (ii) had been the child's home State within six months before the date of the commencement of the proceeding and

the child is absent from such State because of his removal or retention by a contestant or for other reasons, and a contestant continues to live in such State;

(B) (i) it appears that no other State would have jurisdiction under subparagraph (A), and (ii) it is in the best interest of the child that a court of such State assume jurisdiction because (I) the child and his parents, or the child and at least one contestant, have a significant connection with such State other than mere physical presence in such State, and (II) there is available in such State substantial evidence concerning the child's present or future care, protection, training, and personal

relationships;

(C) the child is physically present in such State and (i) the child has been abandoned, or (ii) it is necessary in an emergency to protect the child because the child, a sibling, or parent of the child has been subjected to or threatened with mistreatment or abuse;

(D) (i) it appears that no other State would have jurisdiction under subparagraph (A), (B), (C), or (E), or another State has declined to exercise jurisdiction on the ground that the State whose jurisdiction is in issue is the more appropriate forum to determine the custody or visitation of the child, and (ii) it is in the best interest of the child that such court

assume jurisdiction; or

(E) the court has continuing jurisdiction pursuant to subsection (d) of this section.

(d) The jurisdiction of a court of a State which has made a child custody or visitation determination consistently with the provisions of this section continues as long as the requirement of subsection (c)(1) of this section continues to be met and such State remains the residence of the child or of any contestant.

(e) Before a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated and any person who has physical custody of a child.

(f) A court of a State may modify a determination of the custody of the same child made by a court of another State, if--

(1) it has jurisdiction to make such a child custody determination; and

(2) the court of the other State no longer has jurisdiction, or it has declined to exercise such jurisdiction to modify such determination.

(g) A court of a State shall not exercise jurisdiction in any proceeding for a custody or visitation determination commenced during the pendency of a proceeding in a court of another State where such court of that other State is exercising jurisdiction consistently with the provisions of this section to make a custody or visitation determination.

(h) A court of a State may not modify a visitation determination made by a court of another State unless the court of the other State no longer has jurisdiction to modify such determination or has declined to exercise jurisdiction to modify such determination.